Supreme Court, U. S.
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In the Supreme Court of the United States

October Term 1974

No. 75-235

G. M. LEASING CORP., and
GEORGE I. NORMAN, III,

Petitioners,

v.

THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, ROLAND V. WISE, District Director, JAMES M. LIVSEY, JOHN W. HAACKE, GLENN S. HILTON, KEITH E. FINLEY, JR., CLARK D. HOLFELTZ, JOSEPH J. WHITE, CLESSE S. HILTON, BURT C. APPLEGATE, ROLAND P. HARRINGTON, TIM W. ELISON, LAWNIE C. MAYHEW, THOMAS L. HARKNESS and PHILIP J. CLAYTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioners G. M. Leasing Corporation and George I. Norman, III, respectfully pray that a writ

of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on May 1, 1975.

OPINION BELOW

The opinion of the Court of Appeals has been published in 514 F.2d 935 and appears in Appendix hereto. No opinion was rendered by the District Court for the District of Utah. The Findings of Fact, Conclusions of Law, and Judgment of the District Court appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on May 1, 1975. A timely petition for rehearing was filed pursuant to Rule 40, Federal Rules of Appellate Procedure and suggestions for rerearing *en banc* on May 13, 1975. The petition for rehearing and suggestions for rehearing *en banc* were denied on June 17, 1975, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether assessments and tax levies made by the United States against a taxpayer should have been voided.

2. Whether tax agents of the United States acted

illegally in seizing automobiles and documents in violation of the petitioner G. M. Leasing Corporation's Fourth Amendment rights under the Constitution of the United States.

3. Whether the petitioner G. M. Leasing Corporation was the alter ego of a non-party taxpayer where property was seized from G. M. Leasing Corporation to satisfy taxpayers' alleged liabilities.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 26:

§ 6321. *Lien for taxes.*

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 6331. *Levy and distraint*

(*a*) *Authority of Secretary or delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy

may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia. or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(*b*) *Seizure and sale of property.* — The term 'levy' as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

§ 6861. *Jeopardy assessments of income, estate, and gift taxes.*

(*a*) *Authority for Making.*—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

§ 7403. *Action to enforce lien or to subject property to payment of tax.*

(*a*) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegates, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(*b*) *Parties.*—All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(*c*) *Adjudication and Decree.* — The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

§ 7426. *Civil actions by persons other than taxpayers.*

(*a*) *Actions permitted.*—

(1) *Wrongful levy.*—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

STATEMENT OF THE CASE

G. M. Leasing Corporation, petitioner, brought suit against the respondents for alleged wrongful levy and seizure of assets of G. M. Leasing Corporation seeking multiple forms of relief. The United States counterclaimed for forfeiture of the seized property. The facts giving rise to petitioners' complaint and findings of the trial court which support the granting of this petition are set forth below.

On March 19, 1973, the respondents made assessments of income tax due and owing for the years 1970 and 1971 against George I. Norman, Jr., and Frances M. Norman, neither of whom are parties to this action (II-R-66). On the same day, it was determined that the collection of taxes against the named individuals was in jeopardy and an assessment was issued (II-R-66-67).

Thereafter, some of the respondents entered the garage and building at 4751-53 Holladay Boulevard, Salt Lake County, State of Utah. They did not have a search warrant or summons. The offices were those of G. M. Leasing Corporation and the residence of George I. Norman, III, who later intervened in this action (I-R-14, 46 and 49). The respondents gained admission to the garage and house at the above address by breaking locks (I-R-15, 16). The respondents subsequently became concerned that they were exceeding their authority and left the premises (I-R-19-21). Two days later, the respondents made a decision to again enter the premises and did so searching the premises and seizing assets and books of G. M. Leasing Corporation and the mentioned named taxpayers (I-R-19-22). Subsequently, eight automobiles and a bank account belonging to G. M. Leasing Corporation and certain stock belonging to the intervenor, George I. Norman, III, were seized (I-R-22, 31-34). That portion of the judgment of the Tenth Circuit upholding the trial court's determination that 7,000 shares of seized stock should be returned to the intervenor is not in issue. Subsequently, respondents went to the home of the intervenor and through threats and intimidation gained entrance and searched the premises (I-R-50-51). After the filing of the suit in the instant case, books and records seized belonging to the plaintiff and intervenor were returned but photostated copies were made and retained (I-R-34). Further, the photostats were apparently turned over to the F.B.I. for investigative purposes (Supplemental Memorandum of Appellants, 10th Circuit, p. 2).

Trial on petitioner's complaint, complaint and intervention, and the United States' counterclaim was held in the United States District Court for the District of Utah. The trial court found that the plaintiff, a Utah corporation, and the individual intervenor were entitled to judgment against the named defendants. The trial court found that on the 23rd day of March, 1973, the named employees of the Internal Revenue Service forced entry of the premises at 4751-53 Holladay Boulevard, Salt Lake County, for the purpose of searching for books and records as evidence against the aforementioned taxpayers, not parties to the instant action, and that a second search and seizure took place on the 25th day of March, 1973. The Court also found, which is not in dispute, that no search warrant for such entry nor summons was issued, and that the entry was intentional with the defendants knowing full well that they were violating the rights of G. M. Leasing Corporation and the intervenor. The District Court also found that certain automobiles and stock were seized and that the seizures were pursuant to the jeopardy assessment made by the Internal Revenue Service against George I. Norman, Jr., and Frances Norman. The District Court further found and the Tenth Circuit agreed that the reason for the seizures was the respondents' belief that the petitioners were alter egos, nominees, and transferees of the taxpayers previously mentioned. The District Court found that the assessment did not include proper credits for tax payments, business expenses, and

included income not attributable to the before-mentioned non-party taxpayers and that the assessment was erroneous and no liability for Federal income taxes of the taxpayers was proven. The District Court further determined that petitioner, G. M. Leasing Corporation, was not the alter ego of the taxpayers. The District Court ordered the return of the seized records, destruction of duplicated copies of records, return of the seized automobiles and ordered an award of punitive damages against the defendant, Philip J. Clayton, leaving the amount to be subsequently determined. A counterclaim for foreclosure of the United States was ordered dismissed.

On appeal, the Tenth Circuit determined that the findings that the petitioner, G. M. Leasing Corporation, was not the alter ego of the taxpayers was erroneous. It was further determined that a jeopardy assessment was properly made and was presumptively correct and the petitioners had the continuing full burden to prove the error of the assessment. The court further found that the seizure of the items was not unconstitutional and voided the award of punitive damages against the aforementioned named defendant. The Court of Appeals in effect voided the trial court's findings on three major issues: First, the petitioner G. M. Leasing Corporation was not the alter ego of the jeopardy taxpayers; second, that the jeopardy assessment, although admittedly containing error, was entitled to stand; and third, that the actions of the named defendants did not violate any constitutional rights of the petitioners.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS AS TO THE PRESUMPTIVE EFFECT OF AN INTERNAL REVENUE SERVICE JEOPARDY ASSESSMENT.

The Internal Revenue Service made a jeopardy assessment under 26 U.S.C. § 6861 and then moved to levy and foreclose against the property of G. M. Leasing Corporation in aid of its jeopardy assessment against George I. Norman, Jr. and Frances M. Norman, taxpayers. The Internal Revenue Service contended G. M. Leasing was the alter ego of the Normans. The trial court found that petitioners had offered sufficient evidence to establish material error in the assessment and concluded that the assessment of income taxes, penalties and interest against the taxpayers for 1970 and 1971 was erroneous. The trial court found a failure of the assessment to take into consideration payment made by George I. Norman, Jr., in the sum of $289,800; that the assessment had included items of income which were not in fact income, including $115,000 in alleged income from a sale of securities which was not a sale of securities; failed to credit taxpayers with any business expenses; and gave a zero base to certain stock sales which would have provided income to the taxpayers. Petitioners contended in the trial court that these deficiencies of the respondents shifted the burden of proof as to the correctness of the assessment back to the government and that the government did not meet its burden. This position was adopted by the trial court. The Tenth Circuit reversed stating that the assessment established a prima facie case of liability and that the burden was upon petitioners of going forward with evidence and, also, the burden of ultimate persuasion.

In *United States v. Rindskopf*, 105 U.S. 418 (1881), this Court noted that an assessment made by the Commissioner of Internal Revenue on distilled spirits was merely prima facie evidence. Various Circuit Courts of Appeals have taken the position that the Court has left open the question as to the extent of persuasion a taxpayer must bear before it has been established that the government's assessment is no longer credible. The Court of Appeals apparently adopted the position that petitioners had not met their burden even though the assessment contained the defects the District Court found including an admitted concession of inaccuracies in the assessment of including $115,000 of income. The Court of Appeals relied in part upon *Foster v. CIR*, 391 F.2d 727 (4th Cir. 1968). The *Foster* case is not proper authority to support the Tenth Circuit's position. The case came before the Fourth Circuit on review from the tax court which had individually considered each item and found against the plaintiff. The Fourth Circuit Court of Appeals concluded that the taxpayer had met his burden to overcome the presumption of correctness when he produced evidence that he did not receive the income assessed in the deficiency and upon such a showing the burden shifts back to the government to prove the correctness of the assessment. The court did say that a mere inaccuracy for one year

would not affect the presumption with reference to the (...) deficiency *where the items were separable.* The Tenth Circuit Court's position seems to be an extension of the *Foster* case by no longer requiring that the erroneous assessments be separable before a substantial error can override a jeopardy assessment.

In, *United States v. Rexach*, 482 F.2d 10 (1st Cir. 1973), the Court of Appeals for the First Circuit said that with reference to a deficiency assessment, the tax payer has the burden of showing the assessment is wrong and the burden remains upon the taxpayer and does not shift back to the United States. The Tenth Circuit cited to the *Rexach* case with approval. See, e.g., 514 F.2d 935, 941.

The Second Circuit Court of Appeals has apparently taken a different position. *United States v. Lease*, 346 F.2d 696 (2nd Cir. 1965). In the *Lease* case, the Second Circuit stated:

> Burden is therefore on the taxpayer in the first instance to disprove the computations by the commissioner by a fair preponderance of the credible evidence . . .
>
> Should you find that the defendant has shown error, with respect to a particular item the presumption of correctness of the computations by the commissioner and assessment with respect to that item disappears and then the burden shifts to the Government to prove whether *any* deficiency exists and if so in what amount. (Emphasis added).

> It is not incumbent . . . upon the taxpayer under these circumstances to prove that he owed no taxes or that the correct amount of the tax which he did owe or the correctness of the item concerned.

The Fifth Circuit Court of Appeals has also adopted the Second Circuit's position. In *Bar L. Ranch, Inc. v. Phinney*, 426 F.2d 995 (5th Cir. 1970), the court stated:

> We therefore agree with the conclusion of the *United States v. Lease, Supra,* that a taxpayer defending a collection suit need only show that the Government assessment was arbitrary and that the burden is then on the Government to show whether any deficiency exists, and if so, in what amount.

Consequently, it would appear that the Tenth Circuit and First Circuit's positions are not in harmony with those taken by the Fifth and Second Circuits and that the Fourth Circuit Court of Appeals has taken a positon somewhat akin to that of the Second and Fifth Circuits but with some modifications. It is therefore submitted that with the Circuit Courts of Appeals taking differing positions and this Court having not articulated with specificity the burden that a taxpayer must meet in overcoming the presumption of validity of an assessment of the Internal Revenue Service that this Court should accept jurisdiction and establish a standard that would be of uniform application in the administration of the tax laws of the United States.

2. THE DECISION BELOW REGARDING THE CONDUCT OF THE RESPONDENTS IS CONTRARY TO THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND RELEVANT DECISIONS OF THIS COURT.

The trial court found that on the 23rd day of March, 1973, respondents as employees of the Internal Revenue Service made forced entry into the premises of the petitioners in Salt Lake County, Utah, for the purpose of searching for books and records to be used as evidence against taxpayers George I. Norman, Jr. and Frances M. Norman. The court also found a similar entrance was made on the 25th day of March, 1973. No search warrant was obtained for entry into the premises and seizure of records. The records were duplicated and kept by the United States. The trial court further found the entry was intentional and with full knowledge of the respondents that they were violating the rights of petitioners. Further, certain motor vehicles which were assets of the petitioner G. M. Leasing Corporation were seized as well as stock which was later determined to be the property of the intervenor George I. Norman, III, petitioner. Petitioners relied for their damage cause of action against respondents for the illegal search and seizure on this Court's decision in *Bevins v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The Tenth Circuit Court of Appeals stated that it was clear from the record that appellants conducted a valid statutory levy rather than an illegal search and seizure even though records were duplicated and kept by the United States.

It is submitted that the Tenth Circuit Court's conclusion that the statutory authority for levy and distraint contained in Title 26 U.S.C. § 6331 (a) and (b) does not satisfy Fourth Amendment standards. Assuming that there are valid reasons for the Internal Revenue Service having the authority to seize property, there is still the need even in administrative seizures for the warrant process. *Camara v. The Municipal Court of San Francisco*, 387 U.S. 523 (1967); *See v. City of Seattle*, 387 U.S. 541 (1967). The interests of a citizen in having his property reasonably free from unwarranted seizure at the whim and caprice of tax officials can only be accomplished through the warrant process where the determination is made by some form of neutral official. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The decision of the Tenth Circuit in effect leaves the process of seizure of property to the judgment of interested persons and provides no warrant process as required by the Fourth Amendment to the Constitution.

Further, the seizure of books and records can only be justified in aid of satisfying any tax liability. There would be no need to retain photocopies of the books and records of the petitioner, G. M. Leasing Corporation, for purposes of the tax levy. It is apparent that items were seized for their potential use in a criminal proceeding. The trial court found that certain of the agents, respondents who conducted the search in the instant case, were members of the Intelligence Division of the Internal Revenue Service seeking information for criminal prosecution. Books and records were duplicated and the duplicated records kept by the United

States. Such conduct flies in the face of this Court's decision in *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 385 (1920). Nor can it be said that petitioners have an adequate remedy for suppression of the evidence if and when any criminal charges are brought. The fruit of the poisonous tree concept, *Wong Sun v. United States*, 371 U.S. 471 (1962), may, in some instances, provide a remedy to suppress evidence that the government has directly or indirectly obtained for the purposes of criminal prosecution. But because of the narrowness of the discovery process in criminal proceedings, it is often most difficult to determine the real source of evidence. Consequently, the suppression hearing provides incomplete protection for the petitioners who have been the subject of an illegal search and seizure. Current process available to the Internal Revenue Service provides an adequate basis for the discovery of criminal activity without sanctioning warrantless searches. *United States v. Bischeglia*, ...U.S....., 95 S. Ct. 915 (1975).

In addition the levy and distraint process of 26 U.S.C. § 6331 (a) and (b) are contrary to standards this Court has imposed on state process in similar situations. *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, ... U.S....., 95 S.Ct. 719 (1975). Recently, in *Phelps v. United States*, ...U.S....., 95 S.Ct. 1728 (1975), this Court did discuss the levy process of 26 U.S.C. § 6331 (a). However, the Court did not consider the matter in the context of the conduct involved in this

case. The Tenth Circuit Court of Appeals reversed the trial court as to any claim of damages against the respondents or punitive damages and also rejected the trial court's order for the destruction of the books and records in the possession of the respondents and allowed the use of photostats of said books and records. The decision of the Tenth Circuit Court of Appeals if left to stand places the stamp of approval on conduct in a similar historical context which led to the American Revolution. This Court should accept jurisdiction to determine the correctness of the Tenth Circuit's conclusions.

3. THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS THAT THE PETITIONER WAS THE ALTER EGO OF THE TARGET TAXPAYERS AND THE JUDGMENT RENDERED THEREON SHOULD BE REVERSED WITH AN OPPORTUNITY FOR THE PETITIONERS TO PRESENT ADDITIONAL EVIDENCE ON THE ISSUE.

The District Court found that G. M. Leasing Corporation was not the alter ego of the taxpayers, George I. Norman, Jr. and Frances M. Norman. The Tenth Circuit Court of Appeals viewed the evidence to the contrary and held the trial court's findings to be clearly erroneous. The court from its opinion apparently assumed the burden of showing non-alter ego status was on the petitioners. The Tenth Circuit reversed the trial

court on this point without affording petitioners an opportunity to present evidence as a part of its case in chief on the issue. In the pretrial order (R. 61), it was stipulated that the respondents, United States, etc., had the burden of proof to show that G. M. Leasing Corporation was the alter ego of the named taxpayers. At the time of trial, the petitioner, G. M. Leasing Corporation, moved for a directed verdict or for a judgment of the evidence pursuant to Rule 41 (b) and (c) Federal Rules of Civil Procedure. The motion was made at the close of respondents' evidence. The petitioners were prepared with additional witnesses and evidence to support their contentions, but had no opportunity to do so because the District Court granted petitioners' motions. Thus, the Tenth Circuit Court of Appeals should not have reversed the case outright, but, if it was of the opinion that respondents had sustained their burden of proof, should have remanded the case for further evidence from the petitioners. By not allowing the petitioners to present their side of the case, the Court of Appeals unilaterally determined the matter purely on the government's evidence as well as rejecting the trial court's findings. This Court should grant the petition for certiorari for the purposes of remanding the matter to the District Court with an opportunity for the petitioners to present evidence on the question of whether G. M. Leasing Corporation was, in fact, the alter ego of the taxpayers.

CONCLUSION

For the three reasons presented, a writ of certiorari should issue to review the judgment and opinion of the Tenth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX

(Opinion of the Court of Appeals, Findings of Fact, Conclusions of Law, and Judgment of the District Court)

APPENDIX A

G. M. LEASING CORP.,
Plaintiff-Appellee,

v.

The UNITED STATES of America et al.,
Defendants-Appellants,

George I. Norman, III, Intervenor.

No. 74-1436.

United States Court of Appeals,
Tenth Circuit.

Submitted Jan. 24, 1975.

Decided May 1, 1975.

HILL, Circuit Judge.

This appeal results from an allegedly wrongful levy and seizure by Internal Revenue Service agents of a corporation's assets to satisfy the income tax liability of an individual taxpayer.

Appellants are the United States, Department of the Treasury, Internal Revenue Service (IRS), and a district director and several agents of the IRS. Appellee G. M. Leasing Corp., is a Utah corporation allegedly engaged in a luxury car leasing business in Salt Lake City, Utah.

The controversy centers around the income tax liability of George I. Norman, Jr. (taxpayer), a fugitive from justice.[1] He neglected to file a 1970 or a 1971 income tax return. Subsequently, in October, 1972, IRS agent Philip Clayton was assigned to investigate taxpayer's possible income tax libaility. Clayton received no information or cooperation from taxpayer and necessarily had to base any income tax deficiency upon an examination of third party records. This investigation resulted in deficiency assessments against taxpayer and his wife on March 19, 1973, in the respective amounts of $951,409.93 and $154,138.54. Jeopardy assessments were issued the next day and IRS agents went to taxpayer's residence in Salt Lake City, Utah, to collect the tax. They informed taxpayer's wife of the jeopardy assessments and made a demand for the tax due. She refused and the agents left. Federal tax liens were filed and levies were placed on taxpayer's bank account.

While at taxpayer's residence the IRS agents had observed several automobiles in taxpayer's driveway. A subsequent check with the state motor vehicle department revealed that these automobiles were registered to appellee and another corporation organized and controlled by taxpayer, and that taxpayer owned no automobiles. After further investigation it was determined that appellee was taxpayer's alter ego or transferee and that its assets should be seized to satisfy taxpayer's tax liability.

---

[1] Taxpayer became a fugitive from justice after being convicted of violating 18 U.S.C. §§ 656 and 2. See United States v. Cooper, 464 F.2d 648 (10th Cir. 1972.)

On March 21, 1973, the IRS agents went to appellee's premises to seize assets. This was also the location of taxpayer's other offices and was owned by one of taxpayer's other corporation. Additionally, taxpayer's son, George I. Norman, III (intervenor), was using the premises as a personal residence. With the aid of locksmiths, the agents succeeded in gaining entry into the building. At this point intervenor arrived on the scene and asked what the agents were doing. They told him that they were contemplating seizing assets, and they entered the building. They left a short time later without seizing anything, being unsure as to whether the building was a personal residence or a business office.

The agents returned to appellee's premises on March 23, 1973, to seize assets and documents. They again used locksmiths to gain entry. They seized, inter alia, documents and placed them in boxes, which were loaded on a moving van. It was thought that the documents might be, or could indicate the location of, money and stock certificates. These documents were photocopied and the originals were subsequently returned to appellee. The agents also seized appellee's bank account and automobiles. Subsequently, they determined that intervenor was taxpayer's alter ego and seized 7,143 shares of Emdeko stock in intervenor's name.

On May 3, 1973, appellee filed suit against appellants in the United States District Court for the District of Utah. A second amended complaint, filed on October 17, 1973, alleged, inter alia, that the jeopardy assessments were arbitrary, capricious and without found-

ation; that the determination that appellee was taxpayer's alter ego was arbitrary and capricious; that IRS agents illegally entered appellee's office, thus violating appellee's and taxpayer's constitutional right of privacy; and, that IRS agents conducted an illegal search and seizure of appellee's premises.

The complaint requested, as relief, the return or destruction of the photocopies of the documents seized; return of the automobiles levied on and seized; suppression of evidence obtained from the seized documents and an order barring appellants from ever again obtaining such evidence by any means; suppression of the seizure of the automobiles as evidence and an order barring appellants from ever again seizing said automobiles; release of all levies filed by appellants against appellee's property; and, $525,000 damages for appellants' violation of appellee's constitutional rights.

Intervenor's motion for intervention was granted and he filed a complaint alleging that he was the owner of the Emdeko stock seized by the IRS agents. The complaint requested a determination that intervenor was not taxpayer's alter ego, return of the stock, and money damages in an undetermined amount.

Appellants answered on November 1, 1973, and also counterclaimed for foreclosure of its tax liens. After a nonjury trial the trial court entered findings of fact and conclusions of law, including the following: appellee was not taxpayer's alter ego; the seizure of appellee's assets and documents constituted an illegal search and seizure; appellant Clayton maliciously participated in

the search and seizure of appellee's premises; the assessments against taxpayer and his wife for 1970 and 1971 were erroneous and they have no liability for federal income tax for those years; and intervenor was the owner of 7,000 shares of Emdeko stock but was taxpayer's alter ego with respect to 143 shares thereof.

The trial court entered judgment for appellee and intervenor on May 24, 1974. The judgment (1) gave appellee and intervenor money damages in an undetermined amount against the individual IRS agents; (2) gave appellee and intervenor punitive damages in an undetermined amount against appellant Clayton; (3) suppressed any use of the seized documents or photostats thereof; (4) dismissed appellant's counterclaim with prejudice; (5) ordered the return to appellee and intervenor of all seized assets; (6) ordered the return of 7,000 shares of Emdeko stock to intervenor and the return of 143 shares of Emdeko stock to taxpayer, his wife, "or any other rightful claimant"; (7) removed all levies and liens against said assets; and (8) gave appellee an undetermined amount of money damages for assets disposed of by appellants.

[1] Appellants first challenge the trial court's finding that appellee was not taxpayer's alter ego. This finding is presumptively correct and must be left undisturbed on appeal unless it is clearly erroneous. Quarles v. Fuqua Industries, Inc., 504 F.2d 1358 (10th Cir. 1974). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed. *See, e.g.*, Kelson v. United States,

503 F.2d 1291 (10th Cir. 1974); Clancy v. First Nat'l Bank, 408 F.2d 899 (10th Cir. 1969), cert. den'd 396 U.S. 958, 90 S.Ct. 430, 24 L.Ed.2d 422.

We are convinced that the trial court's alter ego finding is, as appellants contend, clearly erroneous. The evidence overwhelmingly indicates that appellee had no separate or independent existence and that it was taxpayer's alter ego. Appellee was one of four corporations whose existence was initiated by taxpayer. He was not an incorporator, director or officer of appellee, but served only as its general manager. He nevertheless exerted substantial, if not exclusive, control over appellee.

Although appellee had three directors they were nothing more than figureheads. They made no business decisions, had no duties, attended no directors meetings, and were paid no salaries. One of the directors was taxpayer's parttime secretary. She became an incorporator-director at taxpayer's request but was not told what duties and responsibilities these positions would involve and was not informed of the nature of appellee's business. She did not participate in running the affairs of appellee except to write a check when told to do so by taxpayer. She continued to work as taxpayer's secretary while serving as a director and, although she is not presently associated with appellee, never officially terminated her position.

Another incorporator-director, the attorney who prepared the legal work for appellee's incorporation, testified that appellee was merely a shell or alter ego of taxpayer and that "it had no assets or property of its own." He also testified that certain people acted as

officers of appellee in connection with one or two transactions but that appellee actually had no officers. A third director, who also was a director of taxpayer's other corporations, testified that taxpayer controlled the affairs of the corporation "along with discussion of other people."

Taxpayer's dealings with appellee's assets is another factor indicating appellee had no separate existence. Some of appellee's assets, luxury automopiles worth thousands of dollars each, were owned by taxpayer and transferred to appellee. There is no evidence in the record that these transfers were for consideration. The record does suggest that appellee did not have sufficient, if any, funds to acquire these assets. Moreover, the record discloses that these automobiles were not transferred to appellee until several months after its incorporation. One of taxpayer's employees, whose duties included such things as taking care of these luxury automobiles for taxpayer, testified that taxpayer used the automobiles in his individual business and that they were part of his advertising campaign.

The record also indicates that taxpayer purchased a new Jaquar in appellee's name and paid for it with a check drawn on appellee's bank account, but that taxpayer's wife used the car as her personal vehicle. And, a gas station that stored some of appellee's luxury automobiles for taxpayer was paid by checks drawn on Commercial Properties, another of taxpayer's corporations, with only a couple of bills being paid by appellee.

Other evidence indicating that appellee is taxpayer's alter ego is the fact that appellee was supposedly

engaged in the automobile leasing business but that it leased no automobiles; it had no employees, paid no wages, paid no state sales or use tax, issued no stock and had no stockholders' meetings. Appellee contends that stock was issued but has presented no stock certificates, minutes of stockholders' meetings or other documentary evidence to substantiate its allegations.

[2] Based upon this evidence we think it is clear that appellee was taxpayer's alter ego. Accordingly, we must hold that the trial court's finding to the contrary was error.

[3] Relying on Rule 52, F.R.Civ.P.,[2] appellants

[2] Rule 52, F.R.Civ.P., provides:

"(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58, and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds for its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

"(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the questions has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment."

next contend the trial court erred because it entered no independent findings of fact or conclusions of law but merely accepted those prepared by appellee. We agree. This practice of the same trial judge has been twice condemned. See United States v. El Paso Natural Gas Co., 376 U.S. 651, 84 S.Ct. 1044, 12 L.Ed.2d 12 (1964); Kelson v. United States, *supra*. "The mechanical adoption of a litigant's findings is an abandonment of the duty imposed on trial judges by Rule 52, F.R.Civ.P., because findings so made fail to 'reveal the discerning line for decision. . . .'" Kelson v. United States, *supra* at 1294.

Appellants next contend that the trial court erred in holding that appellee's documents and automobiles were illegally seized, and in ordering the return of the automobiles and the suppression of the documents. Again, we agree.

[4] Part of the basis for the trial court's ruling in this regard appears to be a finding that appellant Clayton's participation in the search and seizure was of a malicious character. There is no evidence in the record to support this finding, and we must hold that it is clearly erroneous.

[5] It is clear from the record that appellants conducted a statutorily valid seizure. A jeopardy assessment was made on March 19, 1973. Notice and demand for immediate payment were made the following day,

as authorized by 26 U.S.C. § 6331(a).[3] The refusal to pay authorized appellants to collect the tax by levy, and this included the power of "seizure by any means."[4] Thus appellants were acting pursuant to statute and did not commit an illegal search. The trial court's order returning the assets and suppressing the documents is improper.

Appellants next contend that the trial court erred in voiding the tax assessments and in dismissing their lien foreclosure counterclaim. Appellee, on the other hand, contends the trial court's actions were proper because the unrebutted evidence showed that the assessments were erroneous.

[6, 7] When the government undertook to prove its counterclaim, it offered into evidence documents showing a presumptively correct tax assessment[5] and

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[3] 26 U.S.C. § 6331(a) provides in part:

"If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax. . . . If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section."

[4] 26 U.S.C. § 6331(b) provides in part:

"The term 'levy' used in this title includes the power of distraint and seizure by any means."

[5] These documents were Defendants Exhibit 8, Notice of Federal Tax Lien Under Internal Revenue Laws, and Defendants Exhibit 10, Levy. We also consider Defendants Exhibit 11, Certificate of Assessments and Payments. The trial court refused to admit this document into evidence. We find no valid basis for excluding it and believe it should have been admitted.

thereby established a prima facie case of liability. *See, e.g.*, Psaty v. United States, 442 F.2d 1154 (3rd Cir. 1971); Adams v. United States, 358 F.2d 986, 175 Ct. Cl. 288 (1966); 9 Mertens L. Fed Income Tax. § 49.218 (Zimmet rev. 1971). This placed upon appellee the burden of going forward with the evidence and the burden of ultimate persuasion. *See, e.g.*, United States v. Rexach, 482 F.2d 10 (1st Cir. 1973), cert. den'd 414 U.S. 1039, 94 S.Ct. 540, 38 L.Ed.2d 330.

Appellee contends it met this burden of proof by showing that the assessment was erroneous in that it (1) did not give taxpayer credit for $289,800 which taxpayer paid; (2) gave taxpayer no credit for business expenses; (3) gave taxpayer a zero basis in some stock; and (4) included as income a $115,000 stock sale which was not a sale. Appellee contends this evidence shifted the burden of proof back to appellants to show what deficiency, if any, existed and that appellants failed to prove any deficiency. We disagree.

[8, 9] The fact that taxpayer's assessment was not lessened by business expenses does not vitiate the assessment. The burden of proof to establish a deduction and the amount thereof is upon the taxpayer. Bishop v. CIR, 342 F.2d 757 (6th Cir. 1965). Here, taxpayer is not a party to the proceedings and he did not supply the IRS with any evidence of a business expense or with any documentation to substantiate a claim for a business expense deduction. Since no deduction was established the assessment's failure to reflect such a deduction was proper.

[10, 11] Nor does the fact that taxpayer was given a zero basis in some stock make the assessment erroneous. A taxpayer bears the burden of proving the cost or other basis of property. If he fails to do this the basis of such property is deemed to be zero. *See, e.g.*, Factor v. CIR, 281 F.2d 100 (9th Cir. 1960), cert. den'd, 364 U.S. 933, 81 S.Ct. 380, 5 L.Ed.2d 365.

[12] Appellee also asserts that the assessment was erroneous because it was not lessened or offset by a $289,800 payment made by taxpayer. This payment was attached to an estimated tax return and sent to the IRS on November 15, 1971, before any investigation of tax liability had been conducted or any assessment made. The money was placed in a suspense account to be applied against the assessment. In accordasce with IRS policy this money could not, at the time the assessment was being made, be applied as an offset or credit. The record discloses that taxpayer's account was subsequently credited with this payment. This method of handling a payment did not make the assessment erroneous.

[13, 14] Appellants concede that the assessment included $115,000 of income that was not income, and appellee contends this error vitiates the entire assessment. We are not persuaded that it does. Merely showing an inaccuracy in one item in the deficiency determinations does not defeat the presumption of correctness in favor of the Commissioner with respect to the entire deficiency. *See e.g., Foster v. CIR*, 391 F.2d 727 (4th Cir. 1968).

[15] Appellee, then, has not proven the assessment

to be erroneous. Under these circumstances the trial court erred in voiding the assessment and not decreeing the requested foreclosure of the lien upon the property lawfully seized.

The final issue concerns the disposition of certain stock. Appellants levied on 7,143 shares of Emdeko stock, of which intervenor claimed to be the owner. The trial court found that 7,000 shares of this stock belonged to intervenor and ordered it returned to him. However, it found that intervenor was taxpayer's alter ego with respect to the remaining 143 shares of stock, and it ordered these shares returned to taxpayer, his wife, or any other rightful claimant.

[16] Appellants do not contest the trial court's determination of the 7,000 shares but they do contend that the remaining 143 shares should not be returned to taxpayer. We agree. Appellants seized the stock as part of its levy on taxpayer's property. The trial court should have allowed appellants to keep the 143 shares, which it found were owned by taxpayer, to satisfy taxpayer's tax liability.

In sum, we affirm the trial court's judgment insofar as it orders the 7,000 shares of Emdeko stock returned to intervenor. We reverse the judgment insofar as it (1) awards appellee and intervenor money damages against all appellants; (2) awards appellee and intervenor punitive damages against appellant Clayton; (3) orders the destruction of the books and records in the possession of appellants; (4) orders that any use of photostats of said books and records is illegal; (5) dis-

misses appellants' counterclaim; (6) orders appellants to return all seized assets to appellee and intervenor; (7) removes all levies and liens against said assets; and (8) awards appellee judgment for the value of two automobiles disposed of by appellants. We also conclude, as a matter of law, that at the time of the seizure the government had a valid existing lien upon all of the property involved herein in an amount in excess of the value of the property seized. Judgment will be entered accordingly.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

G. M. LEASING CORPORATION,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,
Defendants.

Findings Of Fact And Conclusions Of Law

Civil No. C-189-73

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, Esq., Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U.S. Attorney; the plaintiff and intervenor

presented evidence supporting their claims; and the defendant presented evidence supporting its claim that the plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman Jr., and Frances M. Norman and further evidence to support its counterclaim for foreclosure on the assets of plaintiff and intervenor and, after resting, the plaintiff and intervenor moved for Judgment and Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure and the court, after reviewing the evidence and the memorandums and responsive memorandums submitted by each party and arguments of counsel and, based thereon, makes the following:

FINDINGS OF FACT

1. Plaintiff is a Utah Corporation.

2. Intervenor is an individual residing in Salt Lake County, Utah.

3. 4751-4753 Holladay Boulevard were the offices of plaintiff G. M. Leasing Corporation and the residence of intervenor, George I. Norman III.

4. On the 23rd day of March, 1973, employees of the Internal Revenue Service forced entry and entered the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, for the purpose of searching for books and records to be used as evidence against George I. Norman Jr. and Frances M. Norman.

5. On the 25th day of March, 1974, employees of Internal Revenue Service again forced entry and searched the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and seized books and records belonging to plaintiff and others to use as evidence against George I. Norman Jr. and Frances M. Norman.

6. That the employees of the Internal Revenue Service committing said search and seizure were defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Josph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

7. The defendants did not obtain a search warrant for the entry into 4751-4753 Holladay Boulevard for search and seizure of records nor did they obtain or serve a summons for seizing the books and records.

8. That the above named defendants did intentionally commit said forced entry, search and seizure knowing full well that they were violating the rights of G. M. Leasing Corporation, intervenor and others.

9. Two of the individual defendants were employed in the IRS Intelligence Division for conducting criminal investigations.

10. Defendant Philip Clayton maliciously committed said forced entry, and search and seizure.

11. After the commencement of this action, the de-

fendants returned the books and records that had been seized at 4751-4753 Holladay Boulevard but photostated said books and records and now retain said photostats.

12. The defendants levied upon and seized all of the assets of G. M. Leasing Corp, which include, to wit: one Stutz automobile, Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one 1971 four-door Stutz Salon, Serial No. 2765-79P364856; one 1971 Stutz, Serial No. 276571A155699; one Jaguar, Serial No. UC1L67176 BW; and a bank account at Zions First National Bank in Salt Lake City, Utah.

13. The defendants disposed of two Stutz automobiles; one 1971 four-door Stutz Salon, Serial No. 2765-79P364856; and one 1971 Stutz, Serial No. 276571A1-55699; the remaining automobiles owned by G. M. Leasing Corp., are under seizure and being stored by the defendants at 50 West 300 South, Salt Lake City, Utah.

14. The defendants seized Certificate # SL012905 of Emdeko International, Inc., bearing 7,143 shares of its common stock from intervenor.

15. All seizures took place pursuant to a jeopardy assessment for federal income taxes, penalties, and interest allegedly owed by George I. Norman Jr. and Frances M. Norman for the years 1970 and 1971.

16. The seizures were based on defendants determination that plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman Jr. and Frances M. Norman.

17. The assessment of income taxes failed to take into consideration a $289,800.00 payment by George I. Norman Jr. and the penalties and interest were also assessed without consideration of the $289,800.00 payment.

18. The assessment included items of income which were not in fact income, including $115,000.00 in alleged income from an alleged sale of securities which was not a sale of securities and was not income.

19. The assessment did not give credit for business expenses incurred by George I. Norman Jr. and Frances M. Norman, and George I. Norman Jr. and Frances M. Norman had extraordinarily high business expenses.

20. The assessment of income taxes, penalties, and interest against George I. Norman Jr. and Frances M. Norman for the years 1970 and 1971 was erroneous.

21. No income or liability for federal income taxes, penalties or interest for George I. Norman Jr. or Frances M. Norman was proven.

22. George I. Norman Jr. and Frances M. Norman have no liability for federal income taxes, penalties or interest for the years 1970 and 1971.

23. G. M. Leasing Corp. was formed and incorporated for the legitimate business purpose of leasing automobiles.

24. The assets of G. M. Leasing Corp. were not transferred to it by George I. Norman Jr. or Frances M. Norman for insufficient consideration.

25. G. M. Leasing Corp. was not undercapitalized at its formation.

26. G. M. Leasing Corp. was not set up for fraudulent purposes or for the purposes to contravene law or contract.

27. G. M. Leasing Corp. had a board of directors and officers.

28. G. M. Leasing Corp. has engaged in substantial business activity in preparation for its business purpose of leasing automobiles.

29. G. M. Leasing Corp. was not solely controlled by George I. Norman Jr. or Frances M. Norman.

30. G. M. Leasing Corp. was not a transferee of George I. Norman Jr. or Frances M. Norman.

31. G. M. Leasing Corp. was not an alter-ego of George I. Norman Jr. or Frances M. Norman.

32. G. M. Leasing Corp. was not a nominee of George I. Norman Jr. or Frances M. Norman.

33. With respect to 7,000 shares of the 7,143 share certificate of Emdeko International, Inc. common stock seized from intervenor George I. Norman III, George I. Norman III, owned 7,000 shares and was not an alter-ego, nominee, or transferee of George I. Norman Jr. or Frances M. Norman.

34. With respect to 143 shares of Emdeko International, Inc. common stock seized from George I. Norman III, George I. Norman III, was acting as alter-ego, nominee, or transferee of George I. Norman Jr. and Frances M. Norman.

From the above findings of fact, the court makes the following.

CONCLUSIONS OF LAW

1. The defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Phillip J. Clayton, committed an illegal search and seizure of the offices of plaintiff and the residence of intervenor in violation of the 4th Amendment to the United States Constitution and plaintiff and intervenor are entitled to Judgment for damages against those defendants for the invasion of their privacy in an amount yet to be determined and the photostats of all illegally seized books and records now in the possession of the defendants should

be destroyed and any use of those photostats of books and records would be illegal.

2. Plaintiff and intervenor are entitled to a Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

3. The defendants counterclaim for foreclosure should be dismissed with prejudice.

4. The defendants should be ordered to return all of the seized assets of G. M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L-67176 BW; without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc. stock to intervenor together with 143 shares of Emdeko International, Inc. stock to G. I. Norman Jr., Frances M. Norman or any other rightful claimant. All levies and liens against said assets should be removed and Judgment against the defendant United States of America in favor of plaintiff should be awarded in an amount yet to be determined for the value of two automobiles disposed of by defendants.

Dated this 24th day of May, 1974.

By The Court:

/s/ WILLIS W. RITTER

Honorable Willis W. Ritter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

G. M. LEASING CORPORATION,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et. al,
Defendants.

Judgment
Civil No.
C-189-73

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, esq., Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U. S. Attorney; the plaintiff and intervenor presented evidence supporting their claims; and having previously made finding of fact and conclusions of law, and based thereon:

IT IS HEREBY ORDERED that the plaintiff and intervenor have judgment for damages in an amount yet to be determined against the defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

IT IS FURTHER ORDERED that the plaintiff and intervenor have Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

IT IS FURTHER ORDERED that all illegally seized books and records now in the possession of the defendants be destroyed and any use of those photostats of books and records is illegal.

IT IS FURTHER ORDERED that the defendants counterclaim for foreclosure is dismissed with prejudice.

IT IS FURTHER ORDERED that the defendants return all of the seized assets of G. M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automboile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L67176 BW., without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc., stock to intervenor together with 143 shares of Emdeko International, Inc., stock to G. I. Norman Jr., Frances M. Norman or any other rightful claimant.

IT IS FURTHER ORDERED that all levies and liens against said assets are removed.

IT IS FURTHER ORDERED that the plaintiff have Judgment in an amount yet to be determined for the value of the two automobiles disposed of by defendants.

DATED this 24th day of May, 1974.

BY THE COURT:

/s/ WILLIS W. RITTER

Honorable Willis W. Ritter